

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/08/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL.O.P.NO.28362 OF 2002

AND

CRL.M.P.NOS.11788 AND 11789 OF 2002

Shanmugavelayudam .. Petitioner

-Vs-

Krishnan .. Respondent

This original petition is preferred under Section 482 of Cr.P.C to call for the records in C.C.No.344 of 2002 on the file of the learned Judicial Magistrate, Ambasamudram and quash the same.

!For Petitioner : Mr.A.Muthukumar

^For Respondent : Mr.C.Sundaravadivel

:ORDER

This criminal original petition has been brought forth by the petitioner, who is shown as an accused in C.C.No.344 of 2002 on the file of the learned Judicial Magistrate, Ambasamudram, seeking to quash the proceedings pending in that calendar case.

2. Heard the counsel for the petitioner as well as respondent, who has made a complaint which is the subject matter in C.C.No.344 of 2002 . Admittedly, one Muppidathy was a subscriber to the chit conducted by the Tenkasi branch of Sree Visalam Chit Fund Ltd. He was a successful bidder in an auction and drew the prize amount. For the payment of future instalments, the complainant stood as a guarantor and offered his properties as security. Since there was a default in payment of the subscription amount, the Company filed a suit in O.S.No.563 of 1 988 on the file of the learned District Munsif, Tenkasi and obtained a decree. The Company initiated execution proceedings in E.P.No.110/96 on the file of the learned District Munsif, Ambasamudram for the sale of the attached property belonged to the complainant/respondent. Under the stated circumstances, the payment of Rs.5000/- was made in part satisfaction of the decree amount. A receipt was also issued for the said amount.

3. Pending the execution proceedings, the respondent herein filed the instant complaint alleging that he paid a sum of Rs.5000/- to the accused Shanmugavelayudam, the Branch Manager of the said financial institution, who

without giving credit to the same, has misappropriated breaching the trust of the complainant. The same was taken cognizance by the learned Judicial Magistrate, Ambasamudram, in C.C.No.344 of 2002. Aggrieved over the same, the accused has brought forth this criminal original petition.

4. Concededly one Muppudathy, the successful bidder in the auction conducted by the said financial institution, drew the price amount, and the complainant stood as a guarantor in respect of the future instalment payments. Pursuant to the default in making payment, a suit was filed by the Company in O.S.No.563 of 1988 and a decree was also passed against both. Consequently, E.P.No.110/96 was filed in order to execute the said decree. Pending the said E.P., a sum of Rs.5,000/- was paid by the respondent. This fact is not disputed by the accused.

5. It is pertinent to point out that the case of the complainant was that he paid Rs.5,000/- only to the accused and nothing more. It remains to be stated that the said sum of Rs.5,000/- has been given credit to towards the part satisfaction of the decree amount. It is also not in dispute that a receipt has also been given for the said sum of Rs.5,000/- to the complainant. A perusal of the receipt would indicate that a typographical error has crept in, in mentioning the E. P. Number as 110/91 instead of 110/96. But, the suit number has been mentioned correctly as 563/88. Thus, it would be abundantly clear that taking advantage of the typographical error, the complainant has come with such a frivolous and vexatious complaint. In such circumstances, without any hesitation whatsoever, the said complaint has got to be quashed, and the interest of justice would also require the same.

6. In the result, this criminal original petition is allowed, quashing the complaint in C.C.No.344 of 2002. Consequently, connected Crl.M.Ps are closed.

Index : Yes

Internet : Yes

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To

The Judicial Magistrate,
Ambasamudram

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